S. HRG. 100-514

SOUTH PACIFIC TUNA ACT OF 1987 AND REAUTHORIZE THE FISHERMEN'S PROTECTION ACT

HEARING

BEFORE THE

NATIONAL OCEAN POLICY STUDY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1695

REAUTHORIZE THE FISHERMEN'S PROTECTIVE ACT

S. 1989

SOUTH PACIFIC TUNA ACT OF 1987

FEBRUARY 23, 1988

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REAUTHORIZATION OF THE FISHERMEN'S PROTECTIVE ACT AND THE SOUTH PACIFIC TUNA ACT OF 1987

TUESDAY, FEBRUARY 23, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
NATIONAL OCEAN POLICY STUDY,
Washington, D.C.

The full Committee and the National Ocean Policy Study met, pursuant to notice, at 10:08 a.m. in room 253, Russell Senate Office Building, Hon. John Breaux presiding.

Staff members assigned to this hearing: Penny Dalton, professional staff member; and Bob Eisenbud, minority professional staff member.

OPENING STATEMENT BY SENATOR BREAUX

Senator BREAUX. The committee will please come to order.

This morning the committee will receive testimony regarding the bill S. 1989, legislation that would implement for the United States the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America.

By providing the United States' tuna fishermen access to the foreign fishing grounds throughout the South Pacific through a regional licensing program, this Treaty represents an important reaffirmation of the U.S. tuna policy and the commitment of the United States government to working closely and cooperatively with the many governments of this region.

Clearly, the Treaty has substantial economic and political significance. As many as 15 very independent and unique Pacific Island nations are expected to ratify and participate in this agreement.

These island nations are known for their diverse perspectives regarding sovereignty, maritime jurisdiction, and their varied relationships with the United States and the Soviet Union. In fact, few treaties involve as many distinct governments or pertain to as large a geographic area. I understand that ten million square miles of water rich in tuna are covered by this agreement.

As such, I suspect that we have only begun to see the many benefits a strong relationship with the South Pacific region will bring for all of the nations involved.

Hand in hand with the Treaty goes the economic assistance agreement with the South Pacific Forum Fisheries Agency. Under this related agreement, the United States has made what I feel is a very necessary commitment to provide $10 million in economic assistance for each of the five years to the South Pacific Forum Fisheries Agency, which serves as the agent for the signatory nations.

I am convinced that the Pacific Island nations very much desire and deserve the opportunity to improve their economies and their standard of living. It is certainly appropriate and wholly consistent with the United States' foreign policy to assist these nations to achieve their long-term goals of economic stability and independence, particularly if the United States industry will benefit as well.

And I believe it will. Under this agreement, the United States tuna vessels will achieve access to ten million square miles of what may be the richest of the tuna fishing grounds.

Therefore, representing the American tuna industry's commitment to the agreement, U.S. tuna vessels will purchase regional licenses at $50,000 each, with a first year guarantee of 35 licenses and $1.75 million. Beyond administrative expenses, these revenues will be distributed among the island nations that are party to the agreement.

The United States industry has also committed to provide $250,000 of direct fisheries-related technical assistance each year to the signatory nations.

The legislation before us, which I introduce on behalf of the State Department, closely tracks these provisions of the Treaty. The bill directs the Secretary of Commerce and the Secretary of State to work together toward developing procedures for licensing and regulating the fishing activities under the Treaty and for enforcing the various Treaty provisions.

While I understand that a number of technical revisions of the bill may be desirable, the substance of the bill is clearly supported by all parties involved in the Treaty process.

For the record, I remain a strong proponent and advocate of the United States' jurisdical position that, due to their highly migratory nature, tuna cannot be effectively conserved and managed on a unilateral basis. Instead, to be effective such conservation and management must be pursued on a cooperative multilateral basis throughout the range of the species.

Congress has consistently confirmed and reiterated this policy. I have to commend the dogged efforts of the State Department over the years to bring this policy of responsible resource conservation and management to the recognition of many nations whose declared economic zones support populations of the highly migratory tuna.

I am pleased to note, therefore, that this Treaty and the legislation before us represents yet another affirmation of the U.S. policy with regard to migratory tuna, and I urge the committee's rapid approval.

To that point, I should note that this Treaty was unanimously recommended for ratification by the Senate on November the 6th, 1987, but cannot enter into force until the United States and ten of the Pacific

Island nation signatories deposit instruments of ratification. Furthermore, of these ten Pacific Island nations, three have to be: one, Papua New Guinea; two, the Federated States of Micronesia; and three, Kiribati.

At this point, at least ten island nations, including the designated three, have now deposited the instruments of ratification, and only the United States remains for this Treaty to enter into force.

But for obvious practical reasons, the United States cannot deposit its instrument of ratification until the legislation is enacted. I hope this points out to the committee the urgency that we all attach to this important legislation.

Therefore, I certainly appreciate the cooperation of Chairman Hollings in scheduling the hearing in such a timely manner.

Further, toward the achievement of a responsible and effective tuna management globally, it is also important that Congress continue to actively support the current U.S. tuna policy as specified in the Fisheries Conservation and Management Act of 1976.

That statute calls for economic sanctions against those nations that persist in their short-sighted unilateral claims of jurisdiction over tuna. Many U.S. tuna vessels have been forcefully seized at gunpoint by foreign nations based on irresponsible jurisdictional claims the United States neither exercises itself nor recognizes.

These aggressive actions are a substantial cost to our U.S. tuna fishermen and certainly threaten the safety and lives of their crew.

Under the authority of the Fishermen's Protective Act, the State Department also substantiates the U.S. tuna policy by providing economic compensation to those U.S. tuna vessels who are the victims of seizures and who are operating in a manner that reflects the U.S. tuna policy.

Today we will also receive testimony concerning S. 1695, a bill that would reauthorize, for three years, section 7 of the Fishermen's Protective Act, better known as the Fishermen's Guarantee Fund.

As I indicated, through the guaranty fund the State Department is able to compensate the owners of the improperly seized tuna vessels for certain losses, including: first, the market value of the fish caught before the seizure that are either spoiled or confiscated; and second, up to 50 percent of the gross income lost as a direct result of such seizures; and third, the actual costs other than those related to the lost fish on board.

Capital for the fund is derived partially from fees paid by the vessel owners and partially by Congressional appropriations. As such, the program constitutes a responsible, industry-supported insurance program that deserves the full support of this committee.

I have opening statements from the Chairman, Senator Hollings, and Senators Inouye, Kerry, and Cranston that I will included in the record.

[The statements and bills follow:]

OPENING STATEMENT BY THE CHAIRMAN

This hearing provides a welcome opportunity to address legislation implementing the "Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States." On November 6, 1987, the Senate unanimously approved ratification of the treaty. Today we are here to discuss the last major step in completing the U.S. ratification process, the enactment of implementing legislation.

The treaty represents a significant foreign policy achievement which should go a long way toward improving U.S. relations with the island nations of the South Pacific. It establishes three major initiatives:

First, through a regional licensing system, U.S. fishermen obtain access to over 10 million square miles of rich fishing waters in the South Pacific Ocean.

Second, cooperative procedures for regulating fishing activities and enforcing treaty provisions are established.

Finally, the U.S. agrees to provide an annual economic assistance package of $10 million to the Pacific island nations for the five-year period covered by the agreement.

To those of us who have followed the negotiations, completion of an agreement is good news and long overdue. From 1982 to the present, incidents between the Pacific island nations and U.S. fishermen have continued to be a source of friction. During that period, four U.S. vessels were seized by island nations on charges of poaching tuna. The situation surrounding the initial seizures was further complicated when the U.S. placed an embargo on all tuna from the island nations involved.

Even more disturbing have been the signs that, as U.S. relations deteriorated, Soviet influence has been on the rise. In 1985 for the first time, the Soviet Union was successful in obtaining a fishery agreement with the tiny nation of Kiribati. A second agreement, which included Soviet access to port facilities, was signed with Vanuatu in 1987. Such developments underscore the importance of a strong and positive U.S. presence in the South Pacific region.

The treaty and legislation under discussion today should make a major contribution toward that objective. I look forward to the testimony and to prompt implementation of the South Pacific Tuna Treaty.

OPENING STATEMENT BY SENATOR INOUYE

Mr. Chairman, I appreciate the opportunity to commend all of those responsible for successfully negotiating such a complex and mutually beneficial treaty. The Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America is based on the very essence of democracy, namely, trust. Belief in the need for coexistence and mutual understanding made the negotiations possible. Despite differences in their laws and policies on the management and licensing of highly migratory tuna, the seventeen countries participating in the negotiations were able to reach an agreement of significant proportion. This treaty creates a mutually beneficial relationship, both economically and politically, for all those involved.

Mr. Chairman, I vigorously lend my support to enacting the South Pacific Tuna Act of 1987 (S.1989) which will implement the South Pacific Tuna Treaty. This Act will enable the U.S. Government to meet its obligations of regulation, licensing and enforcement as set forth in the Treaty. The implementation of the Treaty through this legislation will mitigate potentially serious fisheries and foreign policy problems.

Mr. Chairman, the declaration of the exclusive economic zone (EEZ) by the Convention on the Law of the Sea in 1982, followed by the United States Presidential EEZ proclamation in 1983, created new jurisdictional conflicts in relation to rights over highly migratory species. The desire of the South Pacific Islands to exert jurisdiction over all fisheries, including tuna, found within their exclusive economic zones is in direct conflict with U.S. policy, which considers tuna to be a highly migratory species not regulated by coastal states.

This conflict led to seizures of U.S. tuna vessels, retaliatory trade embargoes and the eventual exploitation of strained relations between a number of the South Pacific Islands and the U.S. by the Soviets, who successfully negotiated several bilateral fishing

agreements. The Pacific Tuna Treaty has been negotiated to resolve this conflict and to secure 10 million square miles of prime fishing grounds in the South Pacific for properly licensed U.S. tuna vessels. Timely implementation of the South Pacific Tuna Treaty through the S.1989 will also guarantee a strong showing of U.S. presence in the South Pacific region, further deterring Soviet intervention in that area.

Mr. Chairman, this is the first significant foreign policy initiative in the South Pacific Island area since World War II. An important feature of the South Pacific Tuna Treaty is the establishment of a system for economic assistance to these islands. Such a system is consistent with the U.S. government's continued commitment to assisting the economic development of the South Pacific Island democracies.

Mr. Chairman, the Treaty, related assistance agreement, and this legislation will set a precedent for responsible, cooperative multilateral conservation and management of an extremely important economic resource. I urge my colleagues to move expeditiously to enact the South Pacific Tuna Act, S.1989.

OPENING STATEMENT BY SENATOR KERRY

Mr. Chairman, I commend you for holding today's hearing on the South Pacific Tuna Treaty and the Fisherman's Protective Act reauthorization. These are indeed two important acts which extend and protect the rights of United States citizens on the high seas.

In recent years a portion of the U.S. tuna fleet has changed the areas in which they fish, from the traditional Eastern Tropical Pacific to the Southwestern Pacific. This shift in fishing location has created major problems for U.S. tuna fishermen. Over the years a number of jurisdictional questions have developed between the U.S. fishermen and the Pacific Island nations. The consequences have been, seized U.S. tuna boats and conversely, U.S. trade embargoes. Not a sensible situation for nations whose friendship should be a natural one. For this reason, the treaty that we have negotiated is an important one. It has taken more than two years to negotiate, and is an important step in resolving the growing number of disputes between the U.S. and several Pacific Island nations. With its implementation we will begin to improve relations with the 16 island nations, provide an economic assistance package (worth $10 million), secure access for our tuna fleet to over 10 million square miles of fishing waters and establish procedures for regulating fishing activities in the South Pacific Ocean. Negotiating a treaty is not an easy task. I want to particularly commend the Department of State and the National Marine Fisheries Service for their hard work and unbending commitment in developing a reasonable and workable plan.

Mr. Chairman, in addition to improving relations with our good neighbors in the south Pacific, this treaty is also very important to the U.S. tuna industry. The industry is estimated to directly employ roughly 20,000 people, and in 1986 alone, the American public consumed over 600 million pounds of canned tuna. As Americans become more health conscious and concerned over what they eat, there has been a dramatic increase in the amount of fish that is consumed in the United States. Statistics show that individuals throughout the nation are eating a record, 15 pounds of sea food a year, and the tuna industry is certainly benefiting from the increase.

A large portion of the fish supplied in the United States is imported. It is important that we assist our fishing industry when it is feasible. If our own fisheries are in good shape that reduces the dependence on foreign imports. The U.S. tuna industry is a large and important fishery-based industry. It provides thousands of jobs and an important segment of the American diet. For this reason I support this act and hope for its expedited consideration by the full Senate.

Mr. Chairman, the Fishermen's Protective Act is also an important piece of legislation. It supports our distant water fishermen when operating off the coasts of foreign nations. The U.S. must protect the sovereign rights of its citizens in foreign waters, and this act accomplishes that purpose. It provides much needed recovery of losses to U.S. fishermen incurred if a foreign nation seizes assets for violation of foreign fishing regulations which are not recognized as valid by the U.S. I support the reauthorization of this legislation.

OPENING STATEMENT BY SENATOR CRANSTON

Mr. Chairman, I am pleased to support S. 1989, a bill to implement the Tuna Fisheries Treaty with certain Pacific island states, and S. 1695, a bill to reauthorize section 7 of the Fishermen's Protective Act. Both bills are important to the continued fishing operations of our U.S. tuna fleet.

On November 6, 1987, the Senate ratified a historic multilateral fishery agreement between the United States and 15 Pacific island nations: Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kirbati, the Marshall Islands, Nauru, New Zealand, Nine, Palau, Papua New Guinea, the Solomon Islands, Tonga, Tuvalu, Vanuatu, and Western Samoa. As a member of the Foreign Relations Committee, I strongly supported ratification of this treaty, which strengthens our ties and improves our relations with these important allies. A unique partnership between the Department of State and the tuna industry brought about this agreement. I wish particularly to compliment Under Secretary Edward Derwinski for his efforts in concluding this treaty.

Tuna are a wandering species of fish. The practical inability of any single nation to manage fishing on the tuna resources of the world has led to regional cooperative organizations that seek to understand and conserve these important food resources. Unfortunately, however, disagreements have continued over which nations should benefit from the economic value of these tuna resources -- those countries in whose waters the fish may, during a portion of the tuna's migrations, be found or those nations whose vessels are adept at catching these fish. The treaty settles this disagreement between our fleet and the Pacific island parties in a fair and reasonable manner.

Thus, I urge the Committee to move quickly to approve S. 1989, which implements the U.S. regulatory obligations under the treaty. The bill is designed to be fully consistent with our obligations and is non-controversial. Because the Department of State will not deposit our U.S. instrument of ratification until implementing legislation is signed by the President, passage of this bill is the only remaining action before the treaty goes into force. Eleven of the other parties have already ratified the treaty. The U.S. ratification is all that is needed to bring the treaty into operation.

I also urge the Committee to act favorably on S. 1695, reauthorizing the Fishermen's Guaranty Program under section 7 of the Fishermen's Protective Act (22 U.S.C. S 1977). This insurance program, to which U.S. tuna vessel owners contribute, provides partial compensation for losses due to seizures by foreign countries. I would note that once S. 1989 is enacted, this program will not apply in the treaty area for actions consistent with the treaty. However, the danger of seizure continues in the Eastern Tropical Pacific where a similar treaty is still awaiting ratification. Unfortunately, Mexico has chosen not to be a party to that agreement and has refused to recognize our tuna fishing rights. Thus, some protections for the boatowners should continue.

I appreciate the opportunity to express my support for legislation so important to our foreign relations and to the tuna industry.

100TH CONGRESS
1ST SESSION

S. 1695

To reauthorize the Fishermen's Protective Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1987

Mr. BREAUX (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To reauthorize the Fishermen's Protective Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(e) of the Fishermen's Protective Act (22 U.S.C. 1977(e)) is amended by striking "October 1, 1987" and substituting "October 1, 1990".

100TH CONGRESS
1ST SESSION

S. 1989

Entitled the "South Pacific Tuna Act of 1987."

IN THE SENATE OF THE UNITED STATES

DECEMBER 21 (legislative day, DECEMBER 15), 1987

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

Entitled the "South Pacific Tuna Act of 1987."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "South Pacific Tuna Act of 1987".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) The term "Administrator" means the person or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States Government.

(2) The term "Authorized Officer" means any officer who is authorized by the Secretary, or the

Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with the Secretary under section 11(a) to enforce the provisions of this Act.

(3) The term "Authorized Party Officer" means any officer authorized by a Pacific Island party to enforce the provisions of the Treaty.

(4) The term "applicable national laws" means those laws as described in paragraph 1(a) of Annex I of the Treaty.

(5) The term "Closed Area(s)" means those areas so identified in Annex I, Schedule 2 of the Treaty.

(6) The term "fishing" means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish;

(D) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(E) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or

(F) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

(7) The term "fishing vessel" or "vessel" means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, and which is documented under the laws of the United States.

(8) The term "Licensing Area" means all waters in the Treaty Area except for:

(A) those waters subject to the jurisdiction of the United States in accordance with international law; and

(B) those waters closed to fishing by United States vessels as set forth in Annex I, Schedule 2 of the Treaty.

(9) The term "licensing period" means the period of validity of licenses issued in accordance with the Treaty.

(10) The term "Limited Area(s)" means those area(s) so identified in Annex I, Schedule 3 of the Treaty.

(11) The term "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

(12) The term "Pacific Island Party" means a Pacific Island nation which is a party to the Treaty.

(13) The term "Party" means a nation which is a party to the Treaty.

(14) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(15) The term "Secretary" means the Secretary of Commerce, or the designee of the Secretary of Commerce.

(16) The term "State" means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam and any

other Commonwealth, territory, or possession of the United States.

(17) The term "Treaty" means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.

(18) The term "Treaty Area" means all waters north of 60 degrees South Latitude and east of 90 degrees East Longitude, subject to the fisheries jurisdiction of Pacific Island parties, and all other waters within rhumb lines connecting the following geographic co-ordinates, designated for the purposes of the Treaty, except for waters subject to the jurisdiction in accordance with international law of a nation which is not a party to the Treaty:

2°35'39"S	141°00'00"E
1°01'35"N	140°48'35"E
1°01'35"N	129°30'00"E
10°00'00"N	129°30'00"E
14°00'00"N	140°00'00"E
14°00'00"N	142°00'00"E
12°30'00"N	142°00'00"E
12°30'00"N	158°00'00"E
15°00'00"N	158°00'00"E
15°00'00"N	165°00'00"E
18°00'00"N	165°00'00"E
18°00'00"N	174°00'00"E
12°00'00"N	174°00'00"E
12°00'00"N	176°00'00"E
5°00'00"N	176°00'00"E
1°00'00"N	180°00'00"
1°00'00"N	164°00'00"W
8°00'00"N	164°00'00"W

8°00′00″N	158°00′00″W
0°00′00″	150°00′00″W
6°00′00″S	150°00′00″W
6°00′00″S	146°00′00″W
12°00′00″S	146°00′00″W
26°00′00″S	157°00′00″W
26°00′00″S	174°00′00″W
40°00′00″S	174°00′00″W
40°00′00″S	171°00′00″W
46°00′00″S	171°00′00″W
55°00′00″S	180°00′00″
59°00′00″S	160°00′00″E
59°00′00″S	152°00′00″E

and north along the 152 degrees of East Longitude until intersecting the Australian 200 nautical mile limit.

SEC. 3. APPLICATION TO OTHER LAWS.

The seizure by a Pacific Island Party of a vessel of the United States shall not be considered to be a seizure described in section 205(a)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1825(a)(4)(C)) or the Fishermen's Protective Act of 1967 (22 U.S.C. 1874) if the seizure is in accordance with the provisions of the Treaty.

SEC. 4. REGULATIONS.

The Secretary of Commerce, with the concurrence of the Secretary of State and after consultation with the Secretary of the Department in which the Coast Guard is operating, shall issue regulations as may be necessary to carry out the purposes and objectives of the Treaty and this Act. These regulations shall be made applicable as necessary to all persons and vessels subject to the jursidiction of the United States, wherever located.

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SEC. 5. PROHIBITED ACTS.

(a) It is unlawful for any person subject to the jurisdiction of the United States—

(1) to violate any provision of this Act or any regulation, license, or order issued pursuant to this Act;

(2) to use a vessel for fishing in violation of applicable national laws;

(3) who is a party to a fishing arrangement under Article 3 paragraph 3 of the Treaty to violate the terms and conditions of any fishing arrangement if the arrangement has received the concurrence of the Secretaries of State and Commerce pursuant to section 18 of this Act;

(4) to use a vessel for fishing in any Limited Area in violation of any requirements in Annex I, Schedule 3 of the Treaty;

(5) to use a vessel for fishing in any Closed Area;

(6) to falsify any information required to be reported, notified, communicated or recorded pursuant to a requirement of this Act, or to fail to submit any required information, or fail to report to the Secretary immediately any change in circumstances which has the effect of rendering any such information false, incomplete or misleading;

(7) to intentionally destroy evidence which could be used to determine if a violation of this Act or the Treaty has occurred;

(8) to refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a search or inspection in connection with the enforcement of this Act, the Treaty, or any regulation or license issued thereunder;

(9) to refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

(10) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer or Authorized Party Officer in the conduct of a search or inspection described in subparagraph (8) above, or an observer under the Treaty in the conduct of his duties;

(11) to resist a lawful arrest for any act prohibited by this section;

(12) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; or

(13) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this

Act or any regulation, permit, or the Treaty, with the knowledge that the fish were so taken or returned.

(b) It is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area—

(1) to use a vessel to fish unless validly licensed as required by the Administrator;

(2) to use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(3) to use a vessel for fishing by any method, except the purse-seine method;

(4) to use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

(5) to operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;

(6) to use a vessel to fish after the Secretary has made a finding under section 10 that fishing should not continue; or

(7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to

use aircraft in association with the fishing activities of a vessel unless it is identified on the license application form or its supplements.

SEC. 6. EXCEPTIONS.

(a) Vessels used for fishing for albacore tuna by the trolling method outside of the 200 nautical mile fisheries zones of the Pacific Island Parties are exempt from the prohibitions of section 5 and the licensing requirements of section 9.

(b) Vessels fishing under the terms and conditions of an arrangement which has been reached under Article 3 paragraph 3 of the Treaty and which has the concurrence of the Secretaries of State and Commerce pursuant to section 18 of this Act are exempt from the prohibitions of section 5(a)(4), 5(a)(5), and 5(b)(3).

SEC. 7. CRIMINAL OFFENSES.

(a) OFFENSE.—A person is guilty of a criminal offense if he or she commits any act prohibited by section 5(a)(8), (10), (11), or (12).

(b) PUNISHMENT.—Any offense described in section 7(a) is punishable by a fine of not more than $50,000, or imprisonment for not more than six months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any Authorized Officer, Authorized Party Officer or

observer under the Treaty in the conduct of their duties, or places any such person in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000 or imprisonment for not more than ten years, or both.

(c) JURISDICTION.—The Federal District Courts shall have jurisdiction over any offense described in this section.

SEC. 8. CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 5 of this Act, shall be liable to the United States for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and shall take into account the nature, circumstances, extent and gravity of the prohibited acts committed, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay and such other matters as justice may require. Except for those acts prohibited by section 5(a)(4), (5), (7), (8), (10), (11), and (12), or section 5(b)(1), (2), (3), and (7), the amount of the civil penalty shall not exceed $250,000 for each violation. Upon written notice, the Secretary of State shall have the

right at any time to participate in any proceeding initiated to assess a civil penalty for violation of this Act.

(b) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, and the subject vessel fails to leave the Licensing Area, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. The matter shall not be referred to the Attorney Gen-

eral for collection if the subject vessel had a valid license in accord with the Treaty at the time of the violation, and within 60 days of the final penalty assessment, leaves and remains outside of the Licensing Area until the final penalty assessed has been paid. This exception from referral shall not apply to violations of sections 5(a) (10), (11), and (12). In addition, the Secretary of State shall not forward license applications for additional licenses for the subject vessel until any civil penalty assessed has been paid.

(d) IN REM JURISDICTION.—Subject to the provisions of subsection (c) above, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5 shall be liable in rem for any civil penalty assessed for the violation under section 8 and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary, in consultation with the Secretary of State, may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) SUBPOENAS.—For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

SEC. 9. LICENSES.

(a) Licenses to fish in the Licensing Area may be requested from the Secretary by operators of vessels, under requirements and procedures established by the Secretary. The license application shall designate an agent for the service of legal process to be located in Port Moresby. The applicant shall ensure that the designated agent for service of process, acting on behalf of the licensee, will receive and respond to any legal process issued in accordance with the

Treaty and will, within 21 days of notification, travel if necessary for this purpose to any Pacific Island Party at no expense to that Party.

(b) The Secretary shall forward license applications to the Secretary of State for transmittal to the Administrator for a license on behalf of a vessel which has submitted a complete application form and the required fees except as provided in paragraphs (e) and (f) below.

(c) License Numbers and Fees:

(1) In the initial year of implementation, 40 vessel licenses shall be made available at $50,000 each. Ten additional licenses in the initial year shall be made available at $60,000 each, and more may be made available in accordance with the Treaty.

(2) In subsequent years, vessel licenses shall be made available in accordance with the Treaty.

(d) Licenses shall be valid for the licensing period specified by the Administrator.

(e) The Secretary may establish a system of allocating licenses in the event more applications are received than there are licenses available.

(f) For the initial year of implementation, license applications and fees totaling at least $1,750,000 must be received by the Secretary before any license applications will be forwarded to the Secretary of State for transmittal to the

Administrator. For subsequent years the same procedures will be followed with no minimum total amount.

(g) The Secretary, in consultation with the Secretary of State, may determine that a license application should not be forwarded to the Administrator for one of the following reasons:

(1) where the application is not in accordance with the requirements of the Secretary or the Treaty;

(2) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Secretary;

(3) where the owner or charterer has not established to the satisfaction of the Secretary that the fishing vessel is fully insured against all risks and liabilities normally provided in maritime liability insurance;

(4) where the owner or charterer has not paid any penalty which has become final, assessed by the Secretary in accordance with this Act.

SEC. 10. FINDINGS BY THE SECRETARY.

(a) Following any investigation conducted in accordance with section 11(b), the Secretary with the concurrence of the Secretary of State, and upon the request of a Pacific Island Party, may order a fishing vessel to leave immediately all, or

portions, of, the Licensing Area, Limited Areas, or Closed Areas upon making a finding—

(1) that the fishing vessel which has not submitted to the jurisdiction of the Pacific Island Party concerned—

(A) while fishing in the Licensing Area did not have a license to fish in the Licensing Area, except in accordance with the paragraph 2 of Article 3 of the Treaty;

(B) was involved in any incident in which an Authorized Officer, Authorized Party Officer, or observer was allegedly assaulted with resultant bodily harm, physicially threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by this Act or the Treaty;

(C) is being investigated by a Party for any infringement of the Treaty provided that the investigating Pacific Island Party notifies the Secretary of State and all other Parties;

(D) has not made full payment within sixty days of any amount due as a result of a final judgment or other final determination deriving

from a violation in waters within the Treaty Area of a Pacific Island Party;

(E) was not represented by an agent for service of process in accordance with the Treaty; or

(2) that there is probable cause to believe that a fishing vessel which has not submitted to the jurisdiction of the Pacific Island Party concerned—

(A) was used for fishing in waters closed to fishing pursuant to Annex I of the Treaty, except as authorized in accordance with paragraph 3 of Article 3 of the Treaty;

(B) was used for fishing in any Limited Area as described in Annex I of the Treaty, except as authorized in accordance with that Annex;

(C) was used for fishing by any method other than the purse seine method, except in accordance with paragraph 2 of Article 3 of the Treaty;

(D) was used for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(E) used an aircraft for fishing which was not identified on a form provided pursuant to Schedule 1 of Annex II in relation to that vessel; or

(F) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed.

(b) Upon issuing an order under this section the Secretary must give the owner a reasonable opportunity, not longer than ten days from service of notice, to respond in writing or otherwise. If an order is issued under subsection (a)(1)(A), (a)(1)(B) or (a)(2) of this section a hearing respecting the violation at issue must be held within 30 days. The Secretary shall rescind any order issued under subsections (a)(1)(D) or (E) upon compliance with the applicable requirements.

(c) All orders issued in accordance with this section are final and not subject to judicial appeal.

(d) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including permanent or temporary injunction, to enforce any order issued by the Secretary under this section.

SEC. 11. ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary in cooperation with the Secretary of State. The Secretary, after consultation with the Secretary of State, may by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (in-

cluding aircraft and vessels), and facilities of any other Federal agency and of any State agency in the performance of these duties.

(b) PACIFIC ISLAND PARTY INVESTIGATION REQUESTS.—The Secretary shall, at the request of the Government of a Pacific Island Party made to the Secretary of State, fully investigate any alleged infringement of the Treaty involving a vessel of the United States, and report as soon as practicable, and in any case within two months, to that Government through the Secretary of State on any action taken or proposed by the Secretary in regard to the alleged infringement.

(c) SEQUENCE OF PROSECUTION.—Prior to instituting any legal proceedings under this Act for those types of actions which are also covered by Article 4 of the Treaty and which concern alleged infringements of the Treaty in waters within the jurisdiction of a Pacific Island Party, the Secretary, through the Secretary of State, shall notify the Government of the Pacific Island Party in accordance with Article 4.8 of the Treaty that the proceedings will be instituted. Such notice shall include a statement of the fact believed to show an infringement of the Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Secretary shall not institute such proceedings if the Government of the Pacific

Island Party objects within 30 days of the effective date of the notice. The Secretary, through the Secretary of State, shall promptly notify the Pacific Island Party exercising jurisdiction over the waters involved in such a legal proceeding of the outcome of the proceedings.

(d) POWERS OF AUTHORIZED OFFICERS.—

(1) Any Authorized Officer may—

(A) with or without a warrrant or other process—

(I) arrest any person, if he has reasonable cause to believe that the person has committed any act subject to prosecution under section 7;

(II) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act; or

(III) seize samples of fish or items for evidence (other than the vessel or its fishing gear or equipment) related to any violation of any provision of this Act;

(IV) order a vessel into port for investigation when an investigation has been requested by a Pacific Island Party in accordance with the Treaty.

(B) execute any warrant or other process issued by any court of competent jurisdiction;

(C) exercise any other lawful authority; and

(D) investigate alleged violations of the Treaty to the same extent authorized to investigate alleged violations of this Act.

(2) Authorized officers shall exercise their powers under section 11(d)(1)(A) (II), (III), and (IV) as much as possible so as not to interfere unduly with the lawful operation of the vessel.

(3) Nothing in this Act shall be construed to limit the enforcement of this or other applicable Federal laws under section 89 of title 14, United States Code.

(e) JURISDICTION OF COURTS.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act.

SEC. 12. REPORTING.

(a) Holders of licenses shall comply with the reporting requirements of part 4 of Annex I to the Treaty.

(b) Information provided by license holders in Schedules 5 and 6 of Annex I of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested

under the Freedom of Information Act, unless disclosure is required under court order or unless the information is essential for an enforcement action under sections 5, 10, or 11(b) and 11(c), or any other proper law enforcement action.

SEC 13. CLOSED AREA STOWAGE REQUIREMENTS.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

SEC. 14. OBSERVERS.

(a) The operator and each member of the crew of the vessel shall allow and assist any person identified as an observer by the Pacific Island Parties to—

(1) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary;

(2) have full access to and use of facilities and equipment on board the vessel which the observer may determine are necessary to carry out his duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's

records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area; without interfering unduly with the lawful operation of the vessel;

(3) disembark at the point and time notified by the Pacific Island Parties to the Secretary; and

(4) enable the observer to carry out his duties safely;

and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, or interfere with an observer in the performance of his duties.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of such reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

(c) Any operator of the vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any person authorized for this purpose by the Pacific Island Parties to have full access to any place where such fish is unloaded, to remove samples and to gather any other information relating to fisheries in the Licensing Area.

SEC. 15. TECHNICAL ASSISTANCE.

The United States tuna industry shall provide $250,000 annually in technical assistance, including provision of assistance by technicians, in response to requests coordinated through the Administrator. The Secretary of State shall designate an entity to coordinate the provision of such technical assistance as provided by the United States tuna industry and to provide an annual report to the Secretary of State regarding the provision of such technical assistance.

SEC. 16. ARBITRATION.

The Secretary of State, in consultation with the Secretary of Commerce, shall appoint an arbitrator to act as a member of the dispute tribunal, as provided by the Treaty.

SEC. 17. DISPOSITION OF FEES, PENALTIES, FORFEITURES, AND OTHER MONEYS.

To the extent required by Article 4 of the Treaty, an amount equivalent to the total value of any fine, penalty, or other amount collected as a result of any action, judicial or otherwise, pursuant to sections 7 and 8 shall be paid by the United States through the Secretary of State to the Administrator as soon as reasonably possible following the date that such amount is collected.

SEC. 18. ADDITIONAL AGREEMENTS.

Within thirty days of the Secretary of State's receipt of notice from a Pacific Island Party that it has concluded an arrangement pursuant to Article 3, paragraph 3, of the

Treaty, the Secretary of State shall consult with the Secretary concerning whether the procedures of Article 4 and 5.6 of the Treaty should be made applicable to such arrangement. At the conclusion of the consultations the Secretary of State shall notify the Pacific Island Party and all other parties to the arrangement in question of the decision he has made.

SEC. 19. SECRETARY OF STATE TO ACT FOR THE UNITED STATES.

The Secretary of State is authorized to receive on behalf of the United States reports, requests, and other communications from the Administrator and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, after consultations with the Secretary, may accept or reject, on behalf of the United States, changes or amendments to Annex I of the Treaty and its Schedules and Annex II to the Treaty and its Schedules.

SEC. 20. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated for fiscal years 1988, 1989, 1990, 1991, and 1992 such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this chapter including—

(1) for fiscal years 1988, 1989, 1990, 1991, and 1992, there is authorized an amount not to exceed

$350,000 annually to the Department of Commerce for administrative expenses; and

(2) for fiscal years 1988, 1989, 1990, 1991, and 1992, there is authorized an amount not to exceed $50,000 annually to the Department of State for administrative expenses.

(b) Funds appropriated for the purposes of this Treaty may be used notwithstanding any of the provisions of the Foreign Assistance Act of 1961, as amended, or of any appropriations Act that imposes restrictions on the maintenance or use of cash transfer assistance, which are inconsistent with the provisions of this Treaty.

SEC. 21. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) this Act shall be effective on the date on which the Treaty enters into force for the United States.

(b) ISSUANCE OF REGULATIONS.—

(1) IN GENERAL.—The authority to promulgate regulations pursuant to this Act shall be effective on the date of enactment of this Act.

(2) EFFECTIVE DATE OF REGULATIONS.—Any regulation promulgated pursuant to this Act shall not be effective before the effective date of the provision of this Act under which the regulation is prescribed.

Senator BREAUX. With that, I would look forward to hearing from our distinguished first panel of witnesses this morning, and would welcome: Hon.Ed Wolfe, who of course is Deputy Assistant Secretary of State for Oceans and Fisheries; and Dr. Bill Evans, who is Assistant Administrator for Fisheries with NOAA. Mr. Fullerton, we will welcome you to the panel also.

Ambassador Wolfe.

STATEMENT OF EDWARD E. WOLFE, JR., DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE

Mr. WOLFE. Thank you, Mr. Chairman.

First let me say it is an honor to be before you for the first time in your capacity as chairman of the subcommittee.

Knowing from past experience, that you would not care for me to read my testimony, I will summarize it very, very briefly and just hit the high points if you would agree to that request.

I am delighted to be here today to discuss S. 1989, the South Pacific Tuna Act. As you know, the Act will enable the U.S. government to meet its obligations under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America.

Further, you are aware that President Reagan ratified this Treaty on 21 December. We are holding our instrument of ratification pending enactment into law of the implementing legislation now before you.

The requisite Pacific Island states have ratified the Treaty and deposited instruments of ratification, which leaves it up to the United States to bring the Treaty into force by depositing its instrument.

The Treaty establishes the terms and conditions under which U.S. tuna vessels may purchase regional licenses and gain fishing access to some, as you said, ten million square miles of South Pacific Ocean.

After two years of difficult and complex negotiations, we were able to come to a practical agreement on licensing fees. Additionally, we finally accepted the principle of an economic assistance package linked to the Treaty in order to reach an overall agreement.

In my full statement you will find provisions of the legislation which would enable the U.S. government to meet its obligations under the Treaty, including authority to issue regulations making violations of the Treaty a violation of U.S. law, licensing procedures, et cetera. But I would refer you to my full testimony.

This Treaty and the legislation to implement it is clearly in the national interest. By establishing a mechanism to regulate fishing in the region, it will resolve fishing-related foreign policy problems that we have encountered in the region as a result of our differing jurisdictional claims concerning tuna.

The regional nature of the Treaty is consistent with the U.S. policy that access to and management of tuna be brought through regional international agreements. I would say, in my own opinion, that international management is the only way to manage and conserve the highly migratory species of tuna.

In addition, the agreement addresses other national security concerns. The economic assistance called for by the agreement responds to the longstanding U.S. government commitment to assist the economic development of these pro-western states.

The Treaty, and the related assistance agreement, is one of the most positive aspects of our relationship with the Pacific Island states. It is perhaps the most important agreement in the region in the past 40 years.

I would submit to you that all four U.S. ambassadors to the nations of this unique region view the agreement as a vital underpinning of our entire range of interests in the area, as does the commander in chief of the Pacific region.

I would urge the committee, Mr. Chairman, to grant this legislation quick and favorable consideration, and would be happy to respond to questions on this and other issues that you may deem necessary.

[The statement follows:]

STATEMENT OF EDWARD E. WOLFE, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE

Mr. Chairman and Members of the Committee. I am delighted to be here today to discuss S. 1989, The South Pacific Tuna Act of 1988. This act will enable the U.S. Government to meet its obligations under the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America. Following an 89 - 0 vote of advice and consent by the Senate on 6 November, President Reagan ratified this Treaty on 21 December. We are holding our instrument of ratification pending enactment into law of the implementing legislation now before you.

The Treaty will enter into force when instruments of ratification are deposited by the United States and at least ten Pacific Island states. These must include the Federated States of Micronesia, Kiribati and Papua New Guinea. The requisite Pacific Island states have ratified the Treaty and deposited their instruments of ratification, which leaves it up to the United States to bring the Treaty into force by depositing its instrument.

This Treaty is an important step in our fisheries policy and our relations with the South Pacific Island states. It will eliminate, for its duration, the serious foreign policy irritants in this area caused by differing jurisdictional claims over tuna. Fishing by U.S. flag tuna vessels in the South Pacific, while consistent with U.S. law, violates the claims of jurisdiction of several Pacific Island states. This had led to enforcement actions, including the seizure of four U.S. tuna vessels between 1982 and 1987, by Pacific Island states.

The Treaty establishes the terms and conditions under which U.S. tuna vessels may purchase regional licenses and gain fishing access to some ten million square miles of the South Pacific. After difficult and complex negotiations lasting over two years, we were able to come to a practical agreement on the licensing fees. Additionally, we finally accepted the principle of an economic assistance package linked to the treaty in order to reach an overall agreement. Briefly, the legislation now before the Committee will enable the U.S. Government to meet its obligations under the Treaty by: providing authority to issue regulations to carry out the purpose and objective of the Treaty, making violations of the Treaty violations of U.S. domestic law, setting forth civil and criminal penalties for violations of this act, setting forth procedures for applying for fishing licenses, setting forth provisions for U.S. cooperation in Treaty enforcement, setting forth the terms and conditions under which U.S. flag tuna vessels may operate in the Treaty licensing area, and enabling the Secretary of State to act on behalf of the United States to accept or reject changes or amendments to the Treaty's annexes and schedules.

Specifically, the role of the Department of State in implementing this treaty will be as a contact point between the Department of Commerce and U.S. tuna fishing interests on the one hand and the Forum Fisheries Agency and the Pacific Island parties to the treaty on the other. For example, license applications will be transmitted to the FFA by the Department of State, the Department will work with the Department of Commerce on enforcement matters, and the Department will be responsible for negotiating any changes or amendments to the annexes and schedules of the treaty.

The legislation authorizes not more than $50,000 annually to the Department of State through FY 1992 for administrative expenses incurred in implementing the treaty. Specific areas of expenditure attributable to treaty implementation will be Departmental participation in annual consultative meetings with the island states on treaty implementation, negotiation of amendments to treaty annexes and schedules and coordination with U.S. tuna interests and the Department of Commerce.

This Treaty, and the legislation to implement it, is clearly in our national interest. By establishing a mechanism to regulate fishing in the region, it will resolve the fishing related foreign policy problems which we have encountered in the region as a result of our differing jurisdictional claims concerning tuna. Specifically, it will break the cycle of seizures of U.S.-flag tunaboats and the subsequent imposition of retaliatory U.S. embargoes mandated by the Magnuson Act.

The regional nature of the Treaty is consistent with U.S. policy that access to and management of tuna be through regional international agreement, and the agreed provisions make a great deal of operational and practical sense from the perspective of U.S. fishermen. The U.S. tuna industry strongly supports the Treaty.

In addition, the agreement addresses other national security concerns. The economic assistance called for by the agreement responds to the long standing U.S. Government commitment to assist the economic development of these pro-Western island states.

Overall, the Treaty and the related assistance agreement will turn fisheries around from an area of confrontation to one of the most positive aspects of our relationship with the Pacific Island states. As far as I know, this Treaty is unique in that nearly all nations of a region have reached an agreement with one country—the United States. They have done so on a subject—fisheries—which is the single most important economic resource for most of them. It is perhaps the most important agreement in the region in the past forty years.

All four U.S. ambassadors to the nations of this unique and diverse region view this agreement as a vital underpinning for our entire range of interests in the area, as does the Commander in Chief of the Pacific region.

For the Treaty to enter into force, this legislation must be enacted. I urge the Committee to grant this legislation quick and favorable consideration.

Mr. Chairman, this concludes my formal statement to the Committee. I would be happy to expand on any of the topics I have mentioned and to answer any questions you or other members of the Committee may have. Thank you.

Senator BREAUX. Thank you, Ambassador.

Dr. Evans.

STATEMENT OF DR. WILLIAM E. EVANS, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE; ACCOMPANIED BY CHARLES FULLERTON, REGIONAL DIRECTOR, SOUTHWEST FISHERIES REGION

Dr. EVANS. Thank you, Mr. Chairman. I thank you also very much for allowing us to have Charlie Fullerton, who is the Regional Director of the Southwest Fisheries Region. Mr. Fullerton participated very strongly in the very vigorous negotiations that we had over two years, and therefore represents a very important data base for you and for other members of the committee.

The Department of Commerce strongly supports enactment of S. 1989, which would implement the South Pacific Tuna Treaty signed by the governments of the 15 Pacific Island states and the United States.

The legislation would have the Secretary of Commerce administer the bill's provisions. The Secretary of State would represent the United States in all matters dealing with the Treaty, but the Secretary of Commerce would be given authority to issue regulations, process license applications, conduct investigations at the request of the Pacific Island Treaty nations, and enforce the terms and conditions of the Treaty.

The Department of Commerce has the necessary expertise to administer the bill. NOAA is prepared to establish a Treaty coordination office in American Samoa to handle the collection of catch reports, fish sampling requirements, and to coordinate the placement of observers on U.S. vessels.

In addition, NOAA is prepared to establish a license processing, and recordkeeping system at Terminal Island, CA to monitor Treaty requirements, to handle inquiries from island states, and to provide them with the data necessary to manage the resource.

NOAA also is prepared to establish a data repository at the National Marine Fisheries Service La Jolla Laboratory to receive, review, and summarize fisheries data for transmittal to the Forum Fisheries Agency.

Frankly, NOAA is prepared to establish an enforcement system to respond to any island states allegation of violations of U.S. vessels and to enforce regulations issued by the Secretary of Commerce to carry out administrative, procedural, and prosecutorial requirements of the Treaty.

Implementation of these aspects of S. 1989 would require placement of three Federal officials with an office and necessary equipment in American Samoa, one Federal agent in Guam, and administrative funds to support the license processing and bookkeeping system, data processing, and treaty administration.

The total expenses, including salaries, data collection, licensing, administration, and enforcement can be covered by the $350,000 authorized for the Department of Commerce in the Act.

In summary, the Department of Commerce strongly supports enactment of S. 1989. It implements a treaty important to the United States.

With respect to S. 1695, the reauthorization section of 7(e) of the Fishermen's Protective Act, which is known as the fishermen's guarantee fund, the Department of Commerce defers to the Department of State as the agency responsible for the operation of this program.

This concludes my statement, Mr. Chairman. Mr. Fullerton and I will answer any questions that you may have on this or any other issue.

[The statement follows:]

STATEMENT OF DR. WILLIAM E. EVANS, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Committee: My name is Dr. William E. Evans. I am the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce. I appreciate this opportunity to provide testimony regarding S. 1989, the South Pacific Tuna Act of 1988.

The Department of Commerce strongly supports enactment of S. 1989 which would implement the South Pacific Tuna Treaty signed by the Governments of 15 Pacific Island States and the United States. The Treaty and a related regional agreement came after 10 sessions of intense negotiations over two years. The Treaty and the related agreement are an important step in improving U.S. relations with the Pacific Island States. The Treaty and agreement remove the threat of vessel seizures while sustaining U.S. tuna policy mandated by the Magnuson Fishery Conservation and Management Act and provide the U.S. tuna industry with considerable benefit--access to the South Pacific tuna resource at least for the next five years.

Briefly, the Treaty and the related agreement will provide $12 million each year for at least five years to the Pacific Island States through the South Pacific Forum Fisheries Agency, a regional organization representing the Pacific Island parties. Under the Treaty, the U.S. tuna industry would contribute $1.75 million in license fees annually plus $250,000 in technical assistance. Under the related agreement, the U.S. Government would provide $10 million annually in economic assistance.

S. 1989 would direct the Secretary of State and the Secretary of Commerce to establish and administer the bill's provisions. The Secretary of State would represent the United States in all matters dealing with the Treaty. The Secretary of Commerce would be given authority to issue regulations, process license applications, conduct investigations at the request of the Pacific Island Treaty nations, and enforce the terms and conditions of the Treaty.

The Department of Commerce has expertise available to implement the bill's provisions. NOAA is prepared to establish a Treaty coordination office in American Samoa to handle the collection of catch reports and fish sampling requirements and to coordinate the placement of observers on U.S. vessels. In addition, NOAA is prepared to establish a license processing and recordkeeping system at Terminal Island, California to monitor Treaty requirements and to handle inquiries from Island States. NOAA also is prepared to establish a data repository at the NMFS La Jolla Laboratory to receive, review, and summarize fishery data for transmittal to the Forum Fisheries Agency. NOAA will establish an enforcement system to respond to any Island.State allegations of violations by U.S. vessels and to enforce regulations issued by the Secretary of Commerce to carry out administrative, procedural, and prosecutorial requirements of the Treaty.

Implementation of these aspects of S. 1989 would require placement of three Federal officials, an office, and necessary equipment in American Samoa; one Federal agent in Guam; and administrative funds to support a license processing and bookkeeping system, data processing, and Treaty administration. Total expenses including salaries, data collection, licensing, administration, and enforcement can be covered by the $350,000 authorized for the Department of Commerce in the Act.

In summary, the Department of Commerce supports S. 1989 because it implements a Treaty important to the United States.

With respect to S. 1695, the reauthorization of section 7(e) of the Fishermen's Protective Act, which is known as the "Fishermen's Guaranty Fund," the Department of Commerce defers to the Department of State, the agency responsible for the operation of this program.

This concludes my testimony, Mr. Chairman. I will be pleased to answer any questions you or other Members of the Committee may have.

Senator BREAUX. Thank you very much, gentlemen.

Charlie, do you have anything to add?

Mr. FULLERTON. No.

Senator BREAUX. First, I offer my congratulations—I know that Charlie has been deeply involved in this, and that Ambassador Wolfe made many, many visits to this part of the world. I cannot say that it is bad duty when it is snowing and sleeting in Washington, but the travel back and forth is really very difficult.

I appreciate the effort of both NMFS and the State Department in implementing the Treaty, as well as working with the industry to put this together.

Does the Treaty in any way bar the island nations from becoming involved with negotiating with any other major fisheries nation, to negotiate the same type of deal that they cut with the United States? I was wondering with regard to the Soviets' interest in this particular part of the world.

Are we likely to see in a couple of months island nations negotiating the same type of treaty with the Soviets? Would it be inconsistent with the Treaty we have here? What are we looking to with regard to these concerns?

Mr. WOLFE. If I may respond to that, Mr. Chairman; the direct answer to your question is that it does not bar any of the signatories to the Treaty from negotiating with any other country any other type of regime.

When we began this negotiation, the Soviets had not begun their negotiations with Kiribati, Vanuatu, or any of the other countries. Our Treaty is to be an alternative to Soviet and other opportunities in the area.

Senator BREAUX. So there is nothing in our Treaty that prohibits them from negotiating with any other country in a similar type of arrangement, is that correct?

Mr. WOLFE. That is correct.

Senator BREAUX. Well, do we have any evidence of negotiations directly with any of the island nations?

Mr. WOLFE. We do not have any direct evidence. I have heard indirectly that the Japanese have been contacted by many of these governments that we are talking about today in terms of negotiating a similar type of agreement.

Senator BREAUX. Well, I can ask Dave Burney that on behalf of the industry. Does the Treaty allow or encourage U.S. commercial development in that area, in the sense of establishing perhaps processing plants or any kind of loading facilities?

Mr. WOLFE. I think I would defer to Mr. Burney, but I believe there are ample opportunities for commercial development throughout the entire region as a result of this Treaty.

Senator BREAUX. What kind of enforcement problems are likely to occur in this area? And if there are any violations by anyone, how would they be handled?

Mr. WOLFE. I will defer to Dr. Evans and Charlie Fullerton in just a second, but we are hoping, since we have been operating within this very unique Treaty on a good faith principle—I know those words probably do not mean that much, but we have counted on good faith between the islanders and the U.S. partners to make this Treaty work.

I would not be truthful if I told you I did not think there would be enforcement problems. We anticipate some type of problems during the first couple of years as we work out the bugs with this Treaty. But I think that they will be minor ones.

Hopefully, we will have everyone applying for a license and having a license. That would be certainly the most egregious of violations; a vessel fishing in the area without a license, unauthorized.

Other violations would include assault on enforcement officers and providing the proper catch data. We will have to work out some bugs, but we are not anticipating major problems with the enforcement scheme of the Treaty.

Senator BREAUX. Dr. Evans, do you have anything to add to that?

Dr. EVANS. Before I defer to Charlie, who can give you, Mr. Chairman, more of the details of how we plan to go about the enforcement, we at National Marine Fisheries Service believe that the enforcement issue is a very important one and could present the problems that Secretary Wolfe has just mentioned. And because of that, we have spent a great deal of effort in trying to come up with an enforcement plan.

And I would like to defer to Charlie to give us some of the details of that.

Mr. FULLERTON. Mr. Chairman, I believe I concur with what Mr. Wolfe has said, that we do not know for sure how it is going to work, but we expect it to work rather smoothly, first with the fact that a violation could bar a fishing vessel from ever fishing in the area again if it was a serious type violation. So there is a substantial deterrent besides the fines.

Further, to help the skippers and the operators comply we are developing a videotape for every skipper that outlines the various prohibitions of the Treaty, the requirements on when he must call in, when he must telex in, and what he must do. We are also sending that out with a brochure, so that the skippers themselves will be well versed on all the requirements of the Treaty.

Senator BREAUX. I appreciate that.

What you are talking about as a practical matter, Charlie, is an area that has 10,000 square miles. It is a zillion miles away from your office on Terminal Island.

What happens if gunboats from one of the islands decide they do not like our boats fishing out there? How do we enforce the Treaty so far away, with so few people in charge of enforcement? You are not going to have a lot of NMFS people floating around in that part of the world.

Mr. FULLERTON. I do not think we are going to have any floating around in that part of the world. The point there is that we are going to know immediately if one of our vessels is apprehended or accosted, and we are going to have to investigate that incident.

Senator BREAUX. How would you handle a seizure of a U.S. tuna vessel in that part of the world?

Mr. FULLERTON. We would of course be informed of it immediately. Under the Treaty, they must inform us immediately, and we would then ask State to go out and determine what was the purpose of the seizure and how did it occur and see if it was within the terms of the Treaty.

Senator BREAUX. Will all of the island nations be signatories to the Treaty? In other words, are there pockets comprised of 200 mile zones around a nation that are not signatories?

Mr. FULLERTON. The only one we do not have so far, I think, Mr. Wolfe, is Tonga, is it not?

Mr. WOLFE. Tonga is the only country that we do not have at this point.

Senator BREAUX. Are they likely to sign?

Mr. WOLFE. It is my personal opinion that they will. In fact, I received a letter from the foreign minister yesterday that was very positive.

Senator BREAUX. Have we not had some seizures with Tonga before?

Mr. WOLFE. No, sir, no seizures with Tonga. Papua New Guinea and Kiribati and the Federated States of Micronesia.

Senator BREAUX. What about the enclaves within the whole Treaty area that are in fact outside of the 200 mile zone of any island nation, which would place that area in an international high seas juridical position?

How are those areas to be covered under the Treaty, if at all?

I take it the blue spots on that map are high seas. What happens when you go tuna fishing on the high seas? Any problems?

Mr. FULLERTON. We have made it so you do not get into that problem. The treaty applies to all the treaty area. In other words, our vessels will not fish in the so-called high sea spots unless they are licensed under the treaty or they are albacore boats, but the purse sieners will not fish in those spots within the treaty area without licenses.

Senator BREAUX. As a practical matter, enforcement is almost impossible; correct?

Mr. FULLERTON. That is correct, sir.

Senator BREAUX. Can other nations come in with their high seas tuna vessels and fish within this area while our treaty is in effect with island nations?

Mr. FULLERTON. Yes.

Mr. WOLFE. They would, of course, as I mentioned earlier, have to negotiate with these islanders on a bilateral, or multilateral basis in this instance, to——

Senator BREAUX. But nothing that the United States could do would say to the Soviets, you cannot fish in these waters because it is within the 200 mile zone of Papua, New Guinea, and we, the United States, have a treaty that allows us to fish in that area?

Mr. WOLFE. That is correct.

Mr. Chairman, if I could point out, we think collectively that we have negotiated the type of agreement that is so acceptable to the islanders and everyone is so excited that we are not anticipating that type of problem. Who knows, but we are satisfied with what we have now.

Senator BREAUX. Let us talk about the Fishermen's Guaranty Program for a minute, section 7. Last year, I think when we extended it for the rest of this fiscal year, we were told through communications from the State Department to the appropriate committees in Congress that the entire guaranty program is "under review".

Can anybody tell me what is the status of the review? Are people fighting over it down there?

Mr. WOLFE. I will be happy to tell you as much as I am able, Senator Breaux.

You are correct in your statement that we are in the process of reviewing the Fishermen's Protective Act, the Magnuson Act, as it relates to foreign policy implications because of difficulties that we have had in the past.

The review is ongoing. We have every intention of having this review completed prior to the October 1 deadline for the reauthorization.

Once the review is completed, we intend to meet with the committee to discuss our findings and our recommendations.

Senator BREAUX. We are recognizing our juridical position by advocating implementation of this treaty. We are, in effect, stating the juridical position of the United States is that highly migratory tuna should be managed through multi-nation treaties as opposed to each nation managing it directly.

Is the review of the Fishermen's Guaranty Program looking at a review of the position of the United States with regard to tuna, at the cost of the program, at how the program is financed, or at the claims that have been filed against the program?

What are we looking at when we say it is being reviewed? Is it being reviewed from a philosophical standpoint vis-a-vis the position on the migratory nature of tuna, or is it being reviewed because of the technical handling of the terms of the program itself?

Mr. WOLFE. In terms of exactly what the treaty states, we are very careful, as you can well imagine through your years of involvement in this issue. That was the most difficult issue, the jurisdictional issue. It took us probably eight to nine months to get over that issue.

In the treaty we have very carefully preserved each of the Pacific island countries' and our country's juridical position through disclaimer clauses, if you will.

In terms of the review, we are reviewing all aspects of again, the FPA and the Magnuson Act as it relates to foreign policy and how in the past that may have impacted on foreign policy.

So it is an overall review of everything pertaining to foreign policy.

Senator BREAUX. What is NMFS' role in the review?

Mr. WOLFE. At this point, the review is strictly internal with the Department of State. We have every intention of branching out to other segments or other agencies that have an interest prior to finalizing any position and, of course, consulting with the committee.

Senator BREAUX. Are they going to be asked specifically for their recommendations?

My position is that a tuna is more than a political object that has to be reviewed vis-a-vis the political implications for relations with other nations. It is also a resource that has to be managed according to its scientific habits and traits.

I do not know that the State Department has that ability to make those determinations without the input of people who manage the fish as a fish instead of a political object.

So my question is, specifically, is NMFS going to be involved? Have you asked them to make comments on this, or are we just going to wait until the State Department makes the decision and then tell everybody else what it is?

Mr. WOLFE. In answer to your question, they will be directly involved. They have not yet been involved because we are in the process of putting our review together.

As I said in my opening statement, Senator Breaux, it is my personal feeling that the international aspects of the highly migratory species need to be conserved and need to be managed on an international regional basis, and I could not agree with you more in that respect.

Senator BREAUX. Congress has mentioned the highly migratory nature of the tuna in a number of bills.

I take it that if your review comes up with a recommendation that is inconsistent with existing law you cannot have that position adopted without amendments to certain acts of the Congress?

Mr. WOLFE. There would definitely need to be a change in the law. We are operating under the law obviously as it is currently drafted, and we will continue doing that until the law is changed.

Senator BREAUX. Since I have both of you up here, let me ask this question, and perhaps it would be better to ask Dr. Evans.

Over three months ago I sent a letter to Secretary Verity of Commerce with regard to ongoing negotiations with the Soviet Union to come up with a reciprocal fishing agreement with the Soviets. I brought out in my letter to Secretary Verity that since the Soviets had been certified under the Packwood Magnuson Act of being in violation of the international whaling agreement that those reciprocal fishery negotiations were not ever going to be implemented.

In light of the fact that the Soviets had clearly stated that they were going to voluntarily terminate all commercial whaling as of May 23, 1987, my question to the Secretary at that time was what was the status of efforts to decertify the Soviets of being in violation of the whaling convention, since they had indicated they were no longer going to be doing any commercial whaling.

I understand, Ambassador Wolfe, that we have now signed this week perhaps a reciprocal fishing agreement with the Soviets when Secretary Shultz and Mr. Shevardnadze were visiting in the Soviet Union.

Am I correct in stating that?

Mr. WOLFE. For my part, Senator Breaux, on Sunday, February 21, Secretary Shultz and Foreign Minister Shevardnadze's initial exchange of notes included a reciprocal access agreement that will allow access for a U.S. fleet to the Soviet waters.

Senator BREAUX. It therefore brings up my question. We have a reciprocal agreement that has now been signed in Moscow between the United States and the Soviets which cannot be implemented as long as the Soviets are certified under Packwood Magnuson.

What is going to happen with that?

Mr. WOLFE. I think I need to clarify. Excuse me, but this is a very important clarification.

The agreement could be implemented without the decertification, in that I have been striving for commercial arrangements between the two industries. They will be meeting on March 14, 1988 to discuss that.

If we have decertification, if that should take place, that would obviously open up the door for a wider agreement, wider parameters, meaning possibly if allocations are available in the Soviet Union or if allocations are available in the U.S..

Senator BREAUX. In other words, you are saying that you could have a reciprocal fishing agreement with the Soviets between the United States and the Soviets while they are certified under Packwood Magnuson?

Mr. WOLFE. That is correct. We have a reciprocal agreement in place now after the signing which allows for joint venture type of operations only, as we had before in the United States zone.

We will now have in the Soviet zone similar type of operations as those which they are presently conducting in our zone, harvesting, processing but not direct allocations because of decertification.

Senator BREAUX. Is one of their interests directed fisheries in the northwest?

Mr. WOLFE. I think everybody in the world that fishes has an interest in the northwest direct allocations, yes, sir.

Senator BREAUX. Is that part of the reciprocal agreement with the Soviets that they were seeking?

Mr. WOLFE. They were interested, but that is not part of this reciprocal agreement now. It could be.

Senator BREAUX. So the agreement that was signed can be fully implemented without any decertification process under Packwood Magnuson?

Mr. WOLFE. It can be fully implemented to the extent of industry-to-industry joint ventures. It cannot be fully implemented in terms of if direct allocations were available in either country.

Senator BREAUX. Thank you for the clarification.

Dr. Evans, what about the decertification?

Dr. EVANS. Mr. Chairman, during the past three weeks we have been actively discussing this issue with a team from the Soviet Embassy.

Yesterday we had a meeting with Mr. Volkov, who was representing the ambassador. We have come to a tentative agreement on wording for a draft letter that the ambassador will send to Secretary Verity.

Secretary Verity's response to that letter, if it does indeed come from the ambassador, is that he will then start in a very expeditious manner the process of decertification.

So I think we are very, very close to resolving that issue. We hopefully will hear from the ambassador this week, and if we do we will have that package in the Secretary's office shortly thereafter.

Senator BREAUX. Is this expected to clearly spell out the Soviets' decision to cease all commercial whaling?

Dr. EVANS. Yes, sir.

Senator BREAUX. Gentlemen, I thank you. I think that congratulations are certainly in order. It has been a long process. I think the negotiations at many times have been very difficult, and I think that Ambassador Wolfe has represented this country very well and ably in this negotiation.

It has not been easy and has been a long-distance negotiation, but I think the ultimate result is something that is going to be extremely beneficial to the U.S. fishing industry, and your shop and you, particularly, deserve a great deal of credit.

Dr. Evans and Charlie, I know that you have worked very, very hard on the technical aspects of it, and I think you have compiled an outstanding record in that effort.

So we thank all of you for you work.

I would like to welcome up at this time representing the U.S. tuna industry Mr. Dave Burney.

Dave, do you want to come up? Do you have others with you?

Bud Walsh, we welcome you, also. We are pleased to have you over in this hearing, and we are pleased to have your statements.

STATEMENT OF DAVID G. BURNEY, EXECUTIVE DIRECTOR, UNITED STATES TUNA FOUNDATION; ACCOMPANIED BY JAMES P. WALSH, WASHINGTON REPRESENTATIVE FOR THE AMERICAN TUNABOAT ASSOCIATION

Mr. BURNEY. Mr. Chairman, if I might, I would ask that that my written testimony be made a part of the record. I will summarize it briefly.

Let me at the outset also express my gratitude to both the Department of State and, in particular, Ambassador Wolfe and to NOAA, and, in particular, to Charlie Fullerton, because it was a monumental task.

It was a very complex negotiation lasting over two and a half years. I think it is much more than a fisheries treaty, as I point out in my testimony. I think it has long lasting foreign policy implications, all of a positive nature.

In fact, when I get into my remarks on the extension of section 7 of the Fishermen's Protective Act I will address the foreign policy implications of this particular treaty and of the tuna policy in the United States.

At the outset I would like to thank you, Mr. Chairman, and also Chairman Hollings for the support that you have given our industry over the years. Again, as I point out in my testimony, it is becoming increasingly more difficult to maintain a distant water fishing operation anywhere in the world.

Without your support and the support of Chairman Hollings and other members of this particular committee, we would have long ago been forced to fly foreign flags of convenience. Not only would this be to the detriment of the United States fisheries, but it would certainly have a very negative impact on what we are trying to get a handle on today; that is, imports.

Once you take our industry out of U.S. fisheries and move it foreign, we will survive with flying a foreign flag, but it is going to add $.5 billion of imports annually to the deficit that we already run in this country.

So I think it is a very small price to pay to support the maintenance of a distant water fishing operation in this country.

I think the treaty in and of itself is a justification for the United States tuna policy. This is a regional treaty. It is not a treaty or a series of bilateral agreements. It was very difficult. I think Ambassador Wolfe stated that it took almost nine months, probably nine meetings, to get over the hurdle of whether we were talking about a series of bilateral agreements or we were truly going to have a regional treaty for tuna licensing.

At the end of the treaty negotiations, all of the parties recognized that it had to be regional in scope. There is no other way to manage, conserve or license tuna fishing. You cannot do it through a series of bilateral transactions.

So I think that this treaty is justification for the tuna policy in this country. It shows that you can have differing juridical positions in the world, but if you can sit down and negotiate at arms length, if there is good faith, if there is a spirit of compromise, you can end up with an agreement.

I want to emphasize that while in representing the tuna industry I appreciate the value this treaty has to our industry, I also appreciate the value that this treaty has to our country. This is the first, in my opinion, significant foreign policy initiative since the end of the second world war in this important region.

I think you could talk to the leaders of any of the countries that participated in the treaty process, and they would tell you that they see this bringing their governments closer to the United States in the years ahead.

I do not view this as a five-year agreement. I view this as the start to an agreement that should go on in perpetuity, and I hope that no one looks at this with its initial five-year term as being the end of an agreement.

I do not say that necessarily just because of the fisheries aspect. Again, I think that we will build a foundation and a long-lasting relationship over the initial term of the treaty.

We appreciated the support that we had along the way. We worked hard on this ourselves. We spent the greater part of the last two and a half years in this area of the country trying to understand the views of the island governments, and I think they were trying to better comprehend the difficulties undertaken by a distant water fishing fleet. I think there was a tremendous spirit that was gathered over the course of the treaty negotiations.

We support as quickly as possible the passage of the implementing legislation. We support the language as it was written. We are working with the staff of this committee now to try to make certain revisions that we agree are in the best interests of all parties.

As far as S. 1695 is concerned, the extension of section 7 of the Fishermen's Protective Act, I was not surprised by the remarks of Ambassador Wolfe today that it is under study, but I think they have a very shortsighted viewpoint in the Department of State. I do not think they recognize the importance of our juridical position and the fact that we have been able to hold our head high around the world because we are right.

From the biology of the resource to the economics of the industry that we have in this country, we have to maintain that juridical position. There is no way to have an effective conservation, management or licensing program on a unilateral basis. It has to be done through regional or international cooperation.

This is evidenced by this treaty. It is evidenced by the agreement that we had negotiated in the Eastern Pacific. Unfortunately, we have some shortsighted governments in the Eastern Pacific that ultimately did not ratify it, but that process has not been completed and we hope to encourage these nations to move in the right direction in the future.

The fact is there is no other way to deal with this resource.

I also believe that if you are looking at foreign policy implications, you have to look to the positive. Our juridical position led us to the conference table with the 17 Pacific island governments and resulted in the treaty which you have before you today. Without the impetus of our juridical position, we would have never concluded those negotiations.

10 years from now, I am sure somebody from the Department of State will stand before this committee and testify how important this treaty has been in strengthening relationships in this particular area of the world. I think it will act as a deterrent from Soviet intervention in this area. The more dependent, the more that we build a relationship out there through this simple little fisheries agreement, the less likely that they are going to turn in the direction of the Soviet Union.

As I have stated earlier, it is a small price to pay. I think over the history of the Fishermen's Protective Act in section 7, the United States Government has paid out about one-half of what the industry has put into the program itself. That price that has been paid has guaranteed the consumer a product that is reasonably priced. It is the lowest priced high protein product on the market today.

Tuna is a staple in this country, and if you do not want to maintain the juridical position, if you want to turn your back on this industry, then you have to look to imports coming in at a much higher price because we will have to go foreign. We have no choice.

So I submit that the State Department in their review ought to review it in its entirety and not in some myopic thinking which is, in my opinion, very short sighted.

Again, we support the longest extension of section 7 that is possible, and I conclude my remarks by saying that we again feel that the treaty is in everyone's interest, and I hope that the State Department will conclude that maintaining the current juridical position and the Fishermen's Protective Act is also in everyone's interest.

Thank you.

[The statement follows:]

STATEMENT OF DAVID G. BURNEY, EXECUTIVE DIRECTOR, U.S. TUNA FOUNDATION

Mr. Chairman and Members of the Committee, my name is David G. Burney and I am the Executive Director of the U.S. Tuna Foundation. With me today is James P. Walsh, Washington representative for the American Tunaboat Association (ATA).

The United States Tuna Foundation is a non-profit trade association comprised of U.S. tuna vessel owners and operators, U.S. tuna processors and U.S. maritime union members. The Foundation works closely with the ATA on matters of mutual concern and the testimony given today is submitted on behalf of both organizations.

Mr. Chairman, on behalf of the entire U.S. tuna industry I want to express deep gratitude for the support you have given us over the past decade. As you are aware it has become increasingly more difficult to maintain a distant water fishing fleet and without your support and the support of many members of this Committee our vessels would have long ago been forced to fly foreign flags of convenience.

The Committee has two bills before it today which are vital to the future of the U.S. tuna industry. S.1989, the South Pacific Tuna Act of 1987, implements a fisheries treaty that has special significance. S.1695, a bill to reauthorize Section 7 of the Fishermen's Protective Act (FPA) (22 U.S.C. 1977), sends a signal to all fishing nations that the United States is committed to maintaining the most technologically advanced distant water fishing fleet in the world. S.1989

Mr. Chairman, I spent the better part of two and one half years working on the treaty that is the subject of S.1989. I made more than twenty trips to the Western Pacific to participate in the multilateral treaty negotiations and to meet with Pacific Island leaders. I was fortunate to be integrally involved in a treaty process that proceeded to conclusion because of good faith and mutual respect.

Good faith was imperative when making many of the compromises that were necessary to bring the protracted negotiations to a successful conclusion. Mutual respect was gained through the candid discussions held on issues of individual and mutual concern. The treaty is a symbol of the parties desire to lay the framework for a longterm mutually beneficial political and economic relationship.

Notwithstanding differing law and policy on the management and licensing for highly migratory tuna, the seventeen countries participating in the negotiations concluded an agreement of significant precedence. This was possible because the parties agreed that differing juridical claims over tuna should be set aside in favor of international cooperation. This approach is consistent with U.S. law and policy on tuna as contained in the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq) and the United Nations, Convention on Law of the Sea (A/CONF.62/WP.10/Rev.3 (1980)).

The treaty provides the U.S. high seas tuna fleet access to a vast tuna fishery on what we consider to be reasonable economic terms. Under the terms of the treaty the fleet is obligated to pay a minimum license fee of $50,000 per vessel for each year of

the five year term. It is expected that a minimum of 30 vessels will operate in the region in 1988. The license fee will be adjusted upward in the first year if necessary to meet the minimum overall fee of $1,750,000. In subsequent years the license fee is subject to a price indexing system that assures the Pacific Island parties a share of any economic benefit derived by a licensee through increased fish prices.

Additionally, the tuna industry has committed to provide $250,000 of technical assistance annually to the Pacific Island parties. Through the technical assistance program the tuna industry hopes to work closely with the Pacific Island parties in order to assist them in achieving their own fisheries objectives.

The industry is hiring a technical assistance coordinator to work with the treaty administrator so that individual fisheries projects can be properly reviewed and completed in a professional manner. At the end of each year the coordinator will submit a summary report to the industry on the status of projects completed or underway. The report will be available for your review.

We have worked closely with the staff of this Committee to insure that the implementing legislation before you carries out the intent of the treaty provisions. We are confident that this is the case and respectfully request that S.1989 be approved as submitted.

Since eleven Pacific Island parties have already ratified the treaty, it will come into force once the United States submits its instrument of ratification to the depository. The U.S. instrument of ratification is being withheld until the implementing legislation is passed. Therefore, we are anxious to see S.1989 enacted into law.

Let me conclude my remarks on S.1989 by expressing appreciation to the Department of State and the Department of Commerce for their efforts in concluding this treaty. We all should recognize that this is much more than a simple fisheries agreement. While it is precedent setting as a regional licensing agreement, it also offers the United States a major opportunity to strengthen its relations in an area of the world that has a long history of supporting our democratic ideals. S.1695

Section 7 of the FPA establishes the Fishermens Guaranty Program for the reimbursement of certain losses occurring as the result of the seizure of a U.S. fishing vessel by a foreign country on the basis of jurisdictional claims not recognized by the United States. To participate in the program individual vessel owners must enter into a guarantee agreement with the Secretary of State and pay the required fee. The fees, which are set by the Secretary, have historically covered well over 50% of the programs outlays.

Section 7 of the FPA was enacted as a means of supporting U.S. distant water fishing vessels engaged in the pursuit of highly migratory species. Section 7 became necessary because extended jurisdiction claims by many coastal states failed to recognize the duty to treat highly migratory species in a special manner as mandated by the international law of fisheries.

The international law of fisheries regarding highly migratory species was eventually codified in the Law of the Sea treaty. Article 64 of the treaty provides that it is the duty of all coastal and fishing nations to "cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of [highly migratory? species throughout the region, both within and beyond the exclusive economic zone".

U.S. tuna policy fully embraces the intent of Article 64. The U.S. policy is also supported by domestic fisheries economics. The U.S. high seas tuna fleet focuses on the harvest of "light meat" tuna (principally, yellowfin and skipjack), required for the dominant U.S. tuna canning market. All of the fleet's annual harvest of 200,000-250,000 metric tons is taken in waters outside the 200-mile fisheries jurisdiction of the United States. This fleet of some 75 high seas tuna purse seine vessels harvests approximately 99% of the light meat tuna annually landed by U.S. fishing vessels.

The U.S. law and policy relating to tunas, including the provisions of the FPA, have been essential in encouraging coastal countries to negotiate meaningful tuna conservation regimes and reasonable tuna vessel access agreements with the United States. The Inter-American Tropical Tuna Convention, the International Convention for the Conservation of Atlantic Tunas, the Eastern Pacific Ocean Tuna Fishing Agreement and the Western Pacific Fisheries Treaty are proof of this.

We ask that S.1695 be reported out of Committee favorably. Thank you.

Senator BREAUX. Mr. Walsh.

Mr. WALSH. Thank you, Mr. Chairman. I just wanted to add a few words of encouragement to move the legislation as soon as possible. As you know, we had hoped to do it last year. The boats are ready to obtain the necessary licenses. All the processes are in place, and we are ready to move. Delay will only look bad on our country's record, which needs to be substantially improved in the area.

Finally, I hope we can also act fairly quickly on section 7, the State Department review has been ongoing for some time. It is not a review that is taking into account the broader aspect of tuna policy, from our view.

At this point, what State has said is that our juridical position causes trouble, we do not need any kind of trouble, so let's eliminate it—instead of saying what is the objective we are trying to achieve, accepting the fact that there will be differences of opinion, as there are with every country that we deal with, and understand that without it there would be no way we could negotiate an acceptable tuna treaty with Mexico, let alone with several other countries.

So we hope that you will move as rapidly as possible and not leave the boat owners waiting with uncertainty about the future of section 7 and this treaty and that we can see these two pieces of legislation become law as soon as possible.

Thank you.

Senator BREAUX. I thank both of you, and I thank you for the work that you have done on behalf of your industries in helping our government actively negotiate the treaty, which I think is a very positive step.

How, from a pragmatic standpoint, will the licensing applications and the fees be handled from the industry's perspective? Who is going to run that, Commerce?

Mr. BURNEY. The Department of Commerce is doing it. In fact, we have already submitted all our applications for prior approval so that once our instrument of ratification is sent to the depository we can move into the licensing phase immediately.

The only thing left is the collection of the actual license fee itself. As you pointed out, Mr. Chairman, for the first year we have an obligation to submit $1,750,000. So we may have to prorate license fees above the $50,000 level to meet that obligation. That is why we have waited until we are ready to go into the actual licensing.

Senator BREAUX. What about the enforcement prosecution abilities that the island nations will retain, as I understand it, under the treaty? Does that give industry any concern about being subject to perhaps seizure or prosecution in the island nations' jurisdictions, or do you think the treaty provides the adequate protection that you will need?

Mr. BURNEY. I do not think there is any way of providing adequate protection. I have had some experiences out there in trying to bring boats home, so to speak, and they have not been pleasant.

I think Ambassador Wolfe made the statement that to a large degree we are dealing in good faith here, and certainly that is what the industry is doing. We have, in essence, not only submitted to the laws that are set forth in the treaty itself and in the implementing legislation but to the individual laws of each country, which we have never seen.

We have been informed that we should not worry about these laws because they are, for the most part, the same as the laws that are set forth in the treaty. We do not know that to be a fact. We are dealing, to a large extent, on good faith.

The treaty will not survive and the relationship will not survive unless there is good faith by all parties.

Mr. WALSH. Mr. Chairman, if I could add one other thing. If you look at the legislation, you will see that it is an unusual piece of legislation implementing the treaty. It is largely—99 percent—enforcement provisions. In many respects it mirrors the Magnuson Act provisions and other enforcement provisions of law.

The purpose of that legislation—and the Pacific countries should understand it—is to make sure that the United States Government takes decisive action with regard to enforcement as to any U.S. flag vessel that may violate the terms of the treaty.

Our legal procedures are as tough, speaking as one who defends many clients in those procedures, as any in the world; therefore, the purpose of this legislation is to tell these countries that they do not need to worry that, our government will if there is a serious problem.

Senator BREAUX. What happens in the practical world when a U.S. vessel fishing in the treaty zone is seized by an island nation and your captain holds up the treaty and the arresting officer holds up the laws of his island nation and says this gives us the right to seize your boat and your cargo and the catch and hold your crew for as long as we would like to?

Where do we go to complain? Do we come back to our country and go to the State Department and say, look, they are violating the terms of the treaty, and get the State Department involved in getting our folks out of the jailhouse in one of the island nations?

Mr. BURNEY. That is correct. It is essentially the same process that we have today, other than the fact that we do have an administrator of the treaty who hopefully, through a direct communication, will have some influence on the island government involved.

But to a large extent, again, it is based on good faith and the ability of the Department of State to be persuasive.

Senator BREAUX. Who is that administrator going to be? I am not concerned about the person. Is he an employee and of whom?

Mr. BURNEY. He is an employee of the Forum Fisheries Agency, which is an agency to which all of the island governments with whom we are involved in the negotiations belong.

Senator BREAUX. That person would be headquartered where?

Mr. BURNEY. He will be in Honiara, the Solomon Islands.

Senator BREAUX. He could be a U.S. citizen, or he could be a citizen of one of the nations?

Mr. BURNEY. He could not be a U.S. citizen, but he will be a citizen of one of those nations. We do not belong to the Forum Fisheries Agency, so it would preclude a U.S. citizen from holding that position.

Senator BREAUX. Would he be the first person the industry would call upon to try to seek a resolution of a conflict? If one of your vessels were seized, you feel, in contravention of the treaty, you would contact the Forum head and say this is contrary to our treaty rights?

Mr. BURNEY. If we had a seizure, the first thing I would do is contact the Department of State and alert them to that fact. Hopefully they would then contact this particular individual.

Senator BREAUX. So the scheme of how things would be handled, in your opinion, from the industry standpoint would be that our industry would deal with our State Department and our State Department would deal with the Forum officials?

Mr. BURNEY. On technical matters we would deal with the Department of Commerce, dealing directly with Charlie Fullerton.

On any foreign policy or interpretation matter, we would deal with the Department of State.

Senator BREAUX. Just as an overview, you are talking about the richest tuna fishing grounds in the world. The fish that would be caught out there, which hopefully will be a great deal, will be processed where, for the most part?

Mr. BURNEY. For the most part, in American Samoa.

Senator BREAUX. It would be shipped back to the United States not really as an imported item because it is a U.S.-owned product already, but it would be processed in a foreign port.

Well, it is not really a foreign port.

Mr. BURNEY. American Samoa is a territory of the United States. I point out again, because I think it is important, that this treaty is also going to assist American Samoa in keeping the U.S. tuna processors there.

As you know, we are the largest private sector contributor to the economy of American Samoa, and if we were not there it would cost the U.S. taxpayer more money to maintain the territory.

Senator BREAUX. So any tuna coming in from American Samoa that is caught by U.S. vessels and processed in American Samoa, of course, would not be subject to any import tariffs?

Mr. BURNEY. That is correct.

Mr. WALSH. In fact, Mr. Chairman, any fish caught by any U.S. flag vessel anywhere in the world, as long as it is not substantially transformed in a foreign country, comes back duty free as a product of the U.S. fisheries.

Senator BREAUX. What would happen if it would be processed, canned and packed on an island other than American Samoa?

Mr. WALSH. It would then become a product of that country.

Senator BREAUX. Subject to import——

Mr. WALSH. Subject to import restrictions.

Senator BREAUX. We may have some other technical questions that we would be submitting or from some of the other members.

We thank you for your good work on behalf of your industries. I think it has been an excellent and long effort, but persistence has paid off, and hopefully our committee and the Senate will be able to move expeditiously and get the legislation behind us.

Thank you both very much.

That will conclude all the testimony and will conclude the work of the committee for this morning. The committee will stand in recess till further call of the chair.

[Whereupon, at 11:00 a.m., the hearing adjourned, subject to call of the Chair.]

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